

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 903 Clerks of the Circuit Court
SPONSOR(S): Judiciary Committee, Barnaby and others
TIED BILLS: **IDEN./SIM. BILLS:** HB 31; CS/CS/SB 838

FINAL HOUSE FLOOR ACTION: 117 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 903 passed the House on April 27, 2021, as CS/CS/SB 838. The bill includes portions of HB 31.

Each of the 67 Florida counties has a clerk of court, which is the elected constitutional officer who oversees judiciary functions as the clerk for the county and circuit courts. The clerks collect court costs and fines related to court dispositions and are authorized to charge fees for performing various functions. Whether the function is "court-related" or "county-related" determines whether the clerk must forward part of the charged fee to the state or whether the clerk may keep the fee. A person who owes fines and fees to the clerk, and who qualifies as indigent, may ask the clerk of court to allow him or her to enter into a payment plan.

The clerk of court is responsible for administering parts of the jury selection process and compensating the jurors. Currently, the Legislature appropriates funds to the Justice Administrative Commission (JAC), which then distributes those funds to the clerks for the compensation of jurors for meals and lodging and other jury-related costs. The amount disbursed to each clerk for juror compensation is calculated based on an estimate of juror compensation costs to be incurred during the upcoming quarter. The bill:

- Requires the Florida Clerks of Court Operations Corporation (CCOC) to establish and manage a reserve within the Clerks of the Court Trust Fund of an amount not exceeding 16 percent of the total budget authority for the clerks during the county fiscal year;
- Makes permanent the 50 percent split of cumulative excess funds between the clerks and the State, removing the language that would require clerks to transfer all cumulative excess funds to the General Revenue Fund effective February 1, 2023;
- Removes the current statutory cap of \$20 million for the total cumulative excess balance that can remain in the Clerks of the Court Trust Fund;
- Defines the term "court record" to help clarify the distinction between a court-related service and a county-related service;
- Corrects the filing fee structure for appellate cases, requiring clerks to remit to the Department of Revenue (DOR) \$20 of the \$100 filing fee for appeals from the county or circuit courts to the district courts of appeal or the Supreme Court;
- Changes the process for allocating funds to the clerks of court for juror-related expenses under s. 40.29, F.S., from a "pre-imburement" system to a reimbursement system; and
- Requires driver license suspension orders to inform a person that he or she may contact the clerk of the court to establish a payment plan to make partial payments for fines, fees, service charges, and court costs.

The bill may have a negative, yet indeterminate fiscal impact to the General Revenue Fund. The bill may have a positive, yet indeterminate fiscal impact to the clerks of the court.

The bill was approved by the Governor on June 18, 2021, ch. 2021-116, L.O.F., and will become effective on October 1, 2021, except as otherwise provided.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Clerks of Court

The State Constitution establishes the office of the clerk of the circuit court in each of the state's 67 counties, and each clerk is elected to a 4-year term.¹ The clerk's duties may be divided by special or general law between two officers.²

All funding for the offices of the clerks of the circuit and county courts performing court-related functions is provided by filing fees for judicial proceedings and service charges for performing court-related functions.³ The costs associated with the payment of jurors and the expenses for meals and lodging of jurors are court-related functions that the clerk of the court must fund from filing fees, service charges, court costs, and fines.⁴

In the event that revenue generated by filing fees and service charges is inadequate to fund the offices of the clerks to perform court-related functions, the state must provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues.⁵

While the chief judge of a judicial circuit has overall authority for oversight of the jury selection system, the clerk of court also has responsibilities relating to the jury process, including:

- Determining the qualifications of jurors;
- Creating lists of potential jurors for future summons;
- Issuing jury summons for prospective jurors;
- Reporting information related to jurors, including the costs associated with the jury process; and
- Compensating jurors.⁶

It is estimated that clerks of the court summon almost two million jurors statewide on an annual basis.⁷

Florida Clerks of Court Operations Corporation (CCOC)

All clerks of the circuit court are still members of the CCOC and hold their position and authority in an ex officio capacity. The CCOC's current functions include:

- Adopting a plan of operations;
- Conducting an election of an executive council;
- Recommending to the Legislature changes in the amounts of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks of court;
- Developing and certifying a uniform system of performance measures and applicable performance standards for court-related functions as developed by the CCOC and clerk workload performance in meeting the workload performance standards;
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks;
- Approving proposed budgets submitted by clerks of the court;
- Developing and conducting clerk educational programs; and

¹ Art. VIII, s. 1(d), Fla. Const.

² *Id.*; art. V, s. 16, Fla. Const.

³ Art. V, s. 14(b), Fla. Const.

⁴ S. 40.32(2), F.S.

⁵ Art. V, s. 14(b), Fla. Const.

⁶ S. 40.001, F.S.

⁷ Florida Clerks of Court Operations Corporation, Agency Analysis of 2020 Senate Bill 590, p. 1 (Dec. 2, 2019).

Preparing and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees by January 1 of each year on the operations and activities of the CCOC and detailing the budget development for the clerks of the court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk of court.⁸

History of Clerk of Courts Funding

Article V of the Florida Constitution establishes the judicial branch of state government, including the trial and appellate courts. The constitution describes the responsibilities and functions of officials involved in the courts system, including judges, state attorneys, public defenders, and the clerks of the court. It also provides the source of funding for the state court system.

In 1998, Florida voters approved Revision 7 to Article V of the Florida Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued paying for facilities, communications, and security for the court system entities. Art. V, s. 14(c) provides that:

No county or municipality, except as provided in this subsection, shall be required to provide any funding for.....the offices of clerks of the circuit and county courts performing court-related functions. Counties shall be required to fund the cost of communications services, . . . the cost of construction or lease, . . . and security of facilities for the offices of the clerks of the circuit and county courts performing court-related functions.

The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings.⁹ The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Art. V, s. 14 of the Florida Constitution specifies the state and county responsibilities for funding the state courts system by providing that the Supreme Court and the District Courts of Appeal must be fully funded by the state, and the trial courts (the circuit and county courts) are jointly funded by the state and counties. Art. V, s. 14(b) provides that:

All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided . . . shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law.

Since the implementation of Revision 7, the funding for the clerks of court and the process of proposing budgets and having budgets approved has undergone multiple changes.

⁸ S. 28.35(2), F.S.

⁹ S. 28.2401, F.S., prescribes the service charges and filing fees for specific services. The section also provides for exceptions and additional service charges.

In 2004, legislation was passed to implement the changes to Art. V. From 2004-08, each county clerk was responsible for preparing a proposed budget, which was then submitted, to the CCOC, on or before August 15 of each fiscal year. The Legislature created the CCOC to provide accountability for the revenues collected by the clerks of the court. All clerks of the circuit court are members of the CCOC.¹⁰

The budget provided detailed information on the anticipated revenues and expenditures necessary for the performance of their court-related functions. The proposed budget was to be balanced, with estimated revenues equaling or exceeding anticipated expenditures.¹¹ Upon review and certification of the individual clerk of court budgets by the CCOC, revenues in excess of the amount needed to fund each approved clerk of court budget was to be deposited in the General Revenue Fund.

If a clerk estimated that available funds plus projected revenues were insufficient to meet anticipated expenditures for court-related functions, the clerk was to report a revenue deficit to the CCOC. If a deficit still existed after retaining all of the projected collections from court-related fines, fees, service charges, and costs, the DOR would certify the amount of the deficit to the Executive Office of the Governor and request the release of funds from the DOR Clerks of the Court Trust Fund.¹²

Additionally, the clerks of court were allowed to retain portions of the moneys collected from filing fees, service charges, court costs, and fines, while other portions were distributed to the General Revenue Fund or other trust funds. The clerks were required to remit one-third of all fines, fees, service charges, and costs collected for court-related functions to the DOR for deposit into the DOR Clerks of the Court Trust Fund.¹³ The DOR would then transfer those excess funds, not needed to resolve clerk deficits, from the Clerks of the Court Trust Fund to the General Revenue Fund.

The CCOC, by October of each year, certified to the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the DOR, the amount of proposed budget for each clerk; the revenue projection supporting each clerk's budget; each clerk's eligibility to retain some or all of the state's share of fines, fees, service charges, and costs; the amount to be paid to each clerk from the Clerks of the Court Trust Fund within the DOR; the performance measures and standards approved by the CCOC for each clerk; and the results of each clerk meeting performance standards.¹⁴

The Legislative Budget Commission (LBC) had authority to approve increases to the maximum annual budget approved for individual clerks if:

- The additional funding was necessary to pay the cost of performing new or additional functions required by changes in law or court rule.
- The additional funding was necessary to pay the cost of supporting increases in the number of judges or magistrates authorized by the legislature.¹⁵

The LBC is composed of seven members appointed by the President of the Senate, and seven members appointed by the Speaker of the House of Representatives.¹⁶ The LBC, among other things, approves budget amendments during the interim between sessions.

¹⁰ S. 28.35, F.S.

¹¹ S. 28.36(3), F.S. (2008)

¹² S. 28.36(4), F.S. (2008)

¹³ S. 28.37(2), F.S. (2008)

¹⁴ S. 28.35(1)(f), F.S. (2008)

¹⁵ See s. 28.36(6), F.S. (2008)

¹⁶ See generally s. 11.90, F.S.

Clerk of Court Funding: 2009-2013

During the 2009 legislative session, the Legislature substantially amended the statutory budget process and procedures for these entities, most noticeably by bringing the clerks and the CCOC into the state budget and appropriating their funds in the annual General Appropriations Act (GAA). While employees of the individual clerk offices remained local government employees, staff with the CCOC became state employees.

Ch. 2009-204, L.O.F., provided that all revenues received by the clerk in the fine and forfeiture fund from court-related fees, fines, costs and service charges are considered state funds and are remitted to the DOR for deposit in to the Clerks of Court Trust Fund within the JAC.¹⁷ The CCOC, moreover, was housed within the JAC but was not subject to the control, supervision, or direction of the JAC.

The new budget procedure also provided that the CCOC was responsible for preparing budget requests for resources necessary to perform its duties and submitting the request pursuant to ch. 216, F.S., to be funded as a budget entity in the GAA.¹⁸ Each clerk was required to submit in his or her budget request the number of personnel and the proposed budget for a specified list of core services, and include the unit cost for each service unit within each core services.¹⁹ The CCOC was then required to compare the proposed unit costs for a given clerk to that of a peer group based on counties with similar sized population and case filings. If the proposed unit costs were higher than a clerk's peers, the clerk was required to justify the increased costs.

The law required the CCOC to recommend to the Legislature the unit costs for each clerk and a statewide budget amount for the clerks by December 1. Beginning in Fiscal Year 2010-11, the CCOC was required to release appropriations to each clerk quarterly. If funds in the Clerks of Court Trust Fund were insufficient for the first quarter release, the CCOC could make a request to the Governor for a trust fund loan pursuant to ch. 215, F.S. The amount of the first three releases was based on one quarter of the estimated budget for each clerk as identified in the GAA.²⁰

The Chief Financial Officer (CFO) reviewed unit costs proposed by the CCOC and made recommendations to the Legislature, and if necessary, could conduct an audit of a clerk or the CCOC. The Legislature could then reject or modify the proposed unit costs, and appropriate the total amount of the clerk budgets in the GAA.

Clerk of Court Funding: 2013-2018

In 2013, the Legislature reversed many of the changes made in 2009 legislative session and expanded the role of the LBC. Most notably, funding for the clerks is no longer appropriated in the GAA.

Rather, the clerks of court worked together with the CCOC, the LBC, and the JAC in requesting, modifying, and finalizing a budget. In 2017, however, the Legislature removed the LBC from the process of reviewing the clerks' budgets.²¹

Clerk of Court Funding – Current Process

¹⁷ S. 28.37(2), F.S.

¹⁸ Each year the General Appropriations Act is enacted during the annual 60-day session of the Legislature to cover state spending for the fiscal year that begins on July 1 and ends on June 30. Each budget request from each agency, as well as the request from the judicial branch, is required to be reviewed by the Legislature. This review may include a request for information or testimony from the agency, the Auditor General, the Office of Program Policy Analysis and Government Accountability, the Governor's Office of Planning and Budgeting, and the public regarding the proper level of funding for the agency to carry out its mission. See s. 216.023(8), F.S.

¹⁹ Those core services included circuit criminal; county criminal; juvenile delinquency; criminal traffic; circuit civil; county civil; civil traffic; probate; family; and juvenile dependency. S. 28.36, F.S. (2011).

²⁰ S. 28.36(10), F.S. (2011)

²¹ Ch. 2017-126, s. 1, Laws of Fla.

In 2019, the Legislature amended ss. 28.35 and 28.36, F.S., to provide that, in addition to the total estimated revenues from fees, service charges, costs, and fines for court-related functions available for court-related expenditures as determined by the most recent Article V Revenue Estimating Conference, the combined budget for the clerks of court may also include:

- The unspent budgeted funds for court-related functions carried forward by the clerks of court from the previous county fiscal year; and
- The balance of funds remaining in the Clerks of the Court Trust Fund after the transfer of funds to the General Revenue Fund required pursuant to s. 28.37, F.S.

The Legislature also amended s. 28.37, F.S.—which previously required the cumulative excess of all fines, fees, service charges, and costs retained by the clerks of court exceeding the total amount estimated by the Article V Revenue Estimating Conference to be transferred to the General Revenue Fund—as follows:

- No later than February 1, 2020, the cumulative excess of all fines, fees, services charges, and costs exceeding \$10 million will be transferred to the General Revenue Fund.
- No later than February 1, 2021, and no later than February 1, 2022, not less than 50 percent of the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund; provided, however, that the balance remaining in the Clerks of the Court Trust Fund after the transfer may not exceed \$20 million beyond the original revenue projection.
- No later than February 1, 2023, and each February 1 thereafter, the cumulative excess of all fines, fees, services charges, and costs will be transferred to the General Revenue Fund.

Payment Plans

As part of the statutory revisions that originated from Revision 7 of Art. V, of the Florida Constitution, the Legislature created s. 28.246, F.S., which requires clerks to accept partial payments for unpaid court-related fees, charges, and costs following the terms of an established payment plan. Clerks design payment plans to meet the needs of the individuals that owe obligations to the state. Most clerks attempt to customize or tailor a payment plan to fit the needs of the customer. Because many defendants are not aware that the payment is due on the day of sentencing, some clerks currently have trouble setting payment plans.

The law does not require a recently released individual to report to the clerk's office to set up a payment plan. As a result, much of the assessed fines and court costs in the Circuit Criminal Division go unpaid for years.

Budget Procedure for Payment of Jury Costs

The JAC receives funds from the Legislature and then provides those funds to the clerks to compensate jurors, pay for meals or lodging for jurors, and pay jury-related personnel costs.²² Since 2016, the Legislature has provided \$11.7 million from General Revenue to cover the projected costs of managing the jury process.²³ The funds are released quarterly. Before 2008, jury costs were funded by the Legislature through the Office of the State Court Administrator.²⁴

The current process for clerks to submit information to the JAC to request funding is as follows:

- Each clerk forwards to the CCOC a quarterly estimate of funds needed to compensate jurors, pay for meals or lodging, and personnel and other costs related to jury management for the upcoming quarter. Each clerk must include a signed and dated certification letter by the tenth of the month immediately before the beginning of the requested quarter.

²² See s. 40.29(5), F.S.

²³ See ch. 2019-115, s. 4, Laws of Fla., Specific Appropriation 770 (Reimbursement of Expenditures Related to Circuit and County Juries Required by Statute from General Revenue Fund . . . \$11,700,000).

²⁴ See s. 40.31, F.S. (2007).

- The CCOC reviews the quarterly requests and determines a funding allocation for each of the 67 clerks, then forwards the funding estimate to the JAC for its review.
- The JAC reviews the funding estimate for the individual counties, determines that the funds are available for the upcoming quarterly funding allocation from General Revenue, and sends the information to the DFS for “pre-imburement” payments to each clerk.

Pursuant to s. 40.29(5), F.S., if the JAC believes the amount appropriated by the Legislature is not sufficient to meet the costs for the remainder of the state fiscal year, the JAC may apportion funds appropriated in the GAA among the counties. The apportionment is based on the amount expended for those purposes in each county during the previous fiscal year. The Chief Financial Officer then issues the appropriate apportioned amount to each county. The statute further provides that the clerks are responsible for any compensation costs that exceed the funding provided in the GAA.²⁵

Service Charges

Clerks of circuit courts are required to charge fees for services rendered in recording documents and instruments.²⁶ Section 28.24, F.S., specifies the maximum amount a clerk may charge for these services. Some services described in s. 28.24, F.S., are “court-related” functions, while other services are “county-related” functions performed by the clerk in its capacity as county recorder,²⁷ such as providing certified copies of official county records. Some functions described in s. 28.24, F.S., can be either court-related or county-related functions, depending on the type of document or service requested.²⁸

The Florida Supreme Court, through its rulemaking process, defines “court records” as “contents of the court file,” including:

- The progress docket and other similar records documenting activity in a case.
- Transcripts.
- Documentary exhibits.
- Records of depositions.
- Records of court proceedings.²⁹

In 2008, the Legislature amended s. 28.24, F.S., increasing various service charges for both county- and court-related functions.³⁰ Included in the 2008 amendments was a provision prohibiting the revenue increases generated by the 2008 amendments from being used by the CCOC³¹ to increase the court clerk's budgets.³² As a result, court clerks began retaining service charges for court-related functions only in the pre-2008 amounts, and began remitting the difference to the DOR for deposit in the General Revenue Fund; the clerks continued to retain the entirety of the charges for the performance of county-related functions.³³

Thus, whether a function performed by the clerk is a “court-related” function or a “county-related” function implicates whether the clerk can keep the entire fee charged for the function. If the function is court-related, the clerk remits part of the fee to the state; if the function is county-related, the clerk keeps the fee.

²⁵ S. 40.29(5), F.S.

²⁶ S. 28.24, F.S.

²⁷ See s. 28.222(1), F.S.

²⁸ For example, s. 28.24(3), F.S., describes a charge for certifying copies of an instrument in the public records. If the requested record is a court filing, the clerk's providing of certified copies of the record is a court-related function. If the requested record is from the county official records, the clerk's providing certified copies of this record is a county-related function.

²⁹ Fla. R. Jud. Admin. 2.420(b)(1)(A).

³⁰ Ch. 2008-111, s. 6, Laws of Fla.

³¹ The CCOC is a public corporation whose duties include “adopting a plan of operation including a detailed budget” for the court clerks. See s. 28.35, F.S.

³² Ch. 2008-111, s. 47, Laws of Fla.

³³ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 2 (Mar. 3, 2021).

In 2019, the Legislature again amended s. 28.24, F.S., specifically requiring court clerks to remit portions of service charges (portions equal to the difference between the pre- and post-2008 charge amounts) to the DOR for deposit into the General Revenue Fund, effectively codifying a practice the clerks were already doing.³⁴ The 2019 amendments, however, did not specify that the increased fees generated by the 2008 amendments must be remitted only when the fees were collected for the performance of court-related functions.

Appellate Filing Fees

Before 2008, s. 28.241(2), F.S., required court clerks to impose a \$250 filing fee for appeals from the county court to a circuit court and a \$50 filing fee for appeals from the circuit court to the district court of appeal (DCA) or the Supreme Court.³⁵ Clerks were required to remit \$50 of these fees to the DOR for deposit into the General Revenue Fund.³⁶ Therefore, the clerks were able to retain \$200 of the fees for appeals from county to circuit courts, but none of the fees from appeals from circuit courts to the DCAs or the Supreme Court.³⁷

In 2008, the Legislature amended s. 28.241(2), F.S., increasing the filing fee for appeals from the county to the circuit courts from \$250 to \$280 and increasing the fee for appeals from the circuit courts to the DCAs or Supreme Court from \$50 to \$100.³⁸ The amendment required the clerks to remit \$80 from both fees to the DOR for deposit in the General Revenue Fund, and to remit one-third of the fees collected in excess of \$80 to the DOR for deposit into the Clerks of Court Trust Fund.^{39,40} Thus, the clerks' retention of the fee for appeal from the county to circuit courts remained at \$200, but the clerks were now allowed to retain \$20 of the DCA and Supreme Court appellate fee.⁴¹ However, the 2008 amendments included a provision stating that the Florida Court CCOC could not approve increases in court clerks' budgets based on increased revenue generated by the amendments.⁴²

As a result, the new money collected in excess of the \$80 filing fee (that is, the \$20 retained from the fees for appeals to the DCAs or Supreme Court), sent to the DOR for deposit in the Clerks of Court Trust Fund, could not be used for court clerks' budgets. Thus, for the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court, the full \$100 amount was deposited in the General Revenue Fund.⁴³

In 2017, the Legislature amended s. 28.241(2), F.S., removing the requirement that clerks remit \$80 of the appellate filing fees to the DOR for deposit in the General Revenue Fund.⁴⁴ However, the provision barring the clerks' use of revenue generated by the 2008 fee increases remained, and the clerks continued remitting \$20 of the \$100 DCA and Supreme Court appellate fees to the DOR for deposit in the General Revenue Fund. Thus, after the 2017 amendments, the clerks were able to retain the entire \$280 fee for appeals from the county to the circuit courts, and retain \$80 of the \$100 fee for appeals from the circuit court to the DCA or Supreme Court.⁴⁵

In 2019, the Legislature again amended s. 28.241(2), F.S., requiring the clerks to remit \$20 from the \$280 filing fee for appeal from the county to the circuit courts to the DOR for deposit into the General

³⁴ Ch. 2019-58, s. 6, Laws of Fla.; Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 5 (Mar. 3, 2021).

³⁵ See ch. 2008-111, s. 8, Laws of Fla.

³⁶ *Id.*

³⁷ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ The Clerks of Court Trust Fund exists within the Department of Revenue and receives funds from clerks of court, to be used "for purposes set forth in legislation." S. 213.131, F.S.—Amendment Notes (2009).

⁴¹ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

⁴² See ch. 2008-111, s. 47, Laws of Fla.

⁴³ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

⁴⁴ Ch. 2017-126, s. 2, Laws of Fla.

⁴⁵ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 4 (Mar. 3, 2021).

Revenue Fund.⁴⁶ The 2019 amendments to s. 28.241, F.S., were intended to be "remedial and clarifying in nature" and applied retroactively to July 1, 2008.⁴⁷

According to the CCOC, the \$20 remittal added in 2019 was applied to the wrong fee and should have been applied to the \$100 fee for appeals from the circuit courts to the DCAs or Supreme Court.⁴⁸ The 2019 amendment, according to the CCOC, was meant to codify the clerks' practice of remitting \$20 of the \$100 fee to the DOR.

Effect of the Bill

The bill amends s. 28.37, F.S., to permanently require the 50 percent share of cumulative excess funds between the clerks and the General Revenue Fund. The bill removes the provision in current statute that would direct the clerks to transfer all cumulative excess funds from the Clerks of the Court Trust Fund to the General Revenue Fund effective February 1, 2023. The bill also removes the current statutory cap of \$20 million for the total cumulative excess balance that can remain in the Clerks of the Court Trust Fund.

The bill also amends s. 28.36, F.S., to direct the CCOC to establish and manage a reserve within the Clerks of the Court Trust Fund of an amount not exceeding 16 percent of the total budget authority for the clerks during the county fiscal year. A minimum of 10 percent of the cumulative excess funds retained by the clerk must be held in reserve until such funds reach an amount equal to the 16 percent. The reserve fund may only be used to:

- Offset a current deficit between the revenue available and the original budget authority;
- Provide funding for an emergency pursuant to s. 252.34(4), F.S.;
- Provide funds in the development of the total aggregate budget of the clerks to ensure that a minimum continuation budget⁴⁹ is met.

Under s. 28.36, F.S., the CCOC may request a budget amendment for release of the reserve funds, in accordance with procedures in s. 216.292, F.S.

The bill amends s. 28.37, F.S., to modify the clerk's budgetary process to allow supplemental appropriations to be included in the clerks combined budget. The bill defines "Cumulative Excess" and "Original Revenue Projection." These terms codify the current process regarding the distribution of fine, fee, service charge and court cost revenues collected in excess of the total amount estimated by the Article V Revenue Estimating Conference.

The bill requires clerks, through the CCOC, to establish uniform payment plan forms for fees, service charges, court costs, and fines for individuals who apply for a payment plan. The form must inform the person of the minimum payment due each month, the term of the plan, acceptable payment methods, and the circumstances under which a case may be sent to collections for nonpayment. The form must be developed by October 1, 2021, and put into use by all clerks by January 1, 2022. Under s. 28.246, F.S., if a person is incarcerated, he or she must apply to the clerk for enrollment in a payment plan within 30 calendar days after release.

The bill amends s. 318.15, F.S., to require that driver license suspension orders must inform the person that they may contact the clerk of the court to establish a payment plan to make partial payments for fines, fees, service charges, and court costs.

The bill makes technical and clarifying changes to fix several "glitch" issues affecting the clerks of court resulting from the passage of CS/CS/HB 337 (2019). Specifically, the bill:

⁴⁶ Ch. 2019-58, s. 8, Laws of Fla.

⁴⁷ Ch. 2019-58, s. 30, Laws of Fla.

⁴⁸ Florida Clerks of Court Operations Corporation, Agency Analysis of 2021 House Bill 31, p. 5 (Mar. 3, 2021).

⁴⁹ A minimum continuation budget is the budget approved for the current county fiscal year or some lesser amount adopted by CCOC.

- Amends s. 28.222, F.S., to specify that if a service charge is related to a court record, the charge is split between the clerks and the General Revenue Fund. It further clarifies, within the subsections it amends, that if the specific service charge is not for a court record, the clerk retains the full amount of the charge.
 - The bill also defines "court records" in s. 28.24, F.S., to help clarify the distinction between a court-related service and a county-related service.
- Amends s. 28.222, F.S., to include language restating that the distribution of funds is based on the type of service performed (court-related or county-related).
- Corrects the filing fee structure for appellate cases in s. 28.241, F.S., clarifying that the \$280 filing fee applies to appeals from lower courts to circuit courts, while the \$100 fee applies to appeals from county or circuit courts to appellate courts.
- The bill amends s. 28.241, F.S., to remove the \$20 General Revenue Fund portion of the filing fee from county court cases appealed to the circuit court. The bill reinstates the \$20 General Revenue Fund portion of the filing fee for appellate cases originating from the county court or circuit court being appealed to a district court of appeal or the Supreme Court, which codifies current clerk practice.

The bill makes changes related to juror expenses, including:

- Changing the process for allocating funds to the clerks of court for juror-related expenses under s. 40.29, F.S., from a "pre-imburement" system to a reimbursement system.
- Requiring each clerk must submit a request for reimbursement to the CCOC within 20 days after each quarter ends.
- Requiring each clerk to attest to the actual costs to compensate jurors, pay for meals and lodging for jurors, and pay for jury-related personnel costs.
- Requiring the CCOC must review each request for reimbursement to ensure the costs are reasonable, directly related to jury management and do not exceed the quarterly funds available.
- Requiring the CCOC, if requested funds exceed available funds, to adjust the total amount requested to match the available funding before submitting the request to the JAC.
- Clarifies that the responsibility of the clerks of court extends to any compensation for jurors, including jury-related personnel costs exceeding available GAA funding.

The bill will become effective on October 1, 2021, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered a prior version of the bill with similar language on March 5, 2021, and determined it may have a negative, yet indeterminate fiscal impact on the state General Revenue Fund.⁵⁰ See *Fiscal Comments*.

The bill may reduce state revenues by an insignificant amount due to the reallocation from the General Revenue Fund to the Clerks of Court Fine and Forfeiture Fund of revenues from the remittance of the \$20 filing fee for appellate cases appealed from the county court to the circuit court.⁵¹

2. Expenditures:

⁵⁰ Revenue Estimating Conference, *HB 903/SB 838*, March 5, 2021, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/Impact0305.pdf (last visited Mar. 29, 2021).

⁵¹ Revenue Estimating Conference, *HB 591- Court Service Charges* (Jan. 17, 2020), http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page205-208.pdf (last visited Mar. 25, 2021).

The bill may have an indeterminate, but likely insignificant, positive impact on state expenditures associated with the change from a “pre-imburement” system to a reimbursement system for juror compensation. To the extent that actual costs for juror compensation are less than the amount provided for that purpose in the GAA, cost savings may be achieved.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference considered a prior version of the bill with similar language on March 5, 2021, and determined it may have a positive, yet indeterminate fiscal impact on the clerks of the court.⁵² See *Fiscal Comments*.

The bill may increase revenues for the Clerks of Court by an insignificant amount due to the reallocation from the General Revenue Fund to the Clerks of Court Fine and Forfeiture Fund of revenues from the remittance of the \$20 filing fee for appellate cases appealed from the county court to the circuit court.⁵³

2. Expenditures:

The bill may have an indeterminate, but likely insignificant, negative fiscal impact on local governments to the extent that actual costs for juror compensation exceed the amount provided for that purpose in the GAA.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Currently, clerks may retain 50 percent of the cumulative excess of fines and fees collected in a fiscal year beyond the original revenue projection within the Clerks of the Court Trust Fund, and must remit the other 50 percent for deposit into the state General Revenue Fund. If the Trust Fund accumulates a balance of \$20 million beyond the original revenue projection, then 100 percent of the cumulative excess collected afterward must be remitted to the General Revenue fund, until the balance of the Trust Fund falls below the \$20 million cumulative excess retainment cap.

The bill removes the \$20 million cumulative excess retainment cap on the Clerks of the Court Trust Fund, which may reduce revenues for the General Revenue Fund, to the extent that the balance in Clerks of the Court Trust Fund is equal to or greater than \$20 million beyond the original revenue projection.

Additionally, the bill permanently requires the 50 percent split of cumulative excess collections, removing current language that would direct all cumulative excess fines and fees to the General Revenue Fund effective February 1, 2023. The removal of this provision may reduce state revenues beginning in Fiscal Year 2022-23 and beyond, by an indeterminate amount. If there is no excess revenue, then there would be no impact. If there is excess revenue, then only half the revenue would

⁵² *Id.*

⁵³ *Id.*

be transferred – resulting in a negative, yet indeterminate impact to the General Revenue Fund and a positive, yet indeterminate impact to the Clerks of Court Trust Fund.⁵⁴

The provisions in the bill relating to changes of payment plan options will likely result in a positive, yet indeterminate impact to collections of the Clerks Fine and Forfeiture Funds.⁵⁵

⁵⁴ *Id.*

⁵⁵ *Id.*